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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,419	08/01/2003	James M. Tour	11321-P022WUD1	4375
47744	7590	04/29/2009	EXAMINER	
WINSTEAD PC			HENDRICKSON, STUART L	
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P. O. BOX 50784			ART UNIT	PAPER NUMBER
DALLAS, TX 75201			1793	
			MAIL DATE	DELIVERY MODE
			04/29/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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The election of SWNTs is noted. The claims should be accordingly amended. All claims are under consideration. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 139 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chen et al. article.

The reference teaches single walled nanotubes, which is what results when you add aryl substituents to SWNTs and then remove them.

Other references to single walled carbon nanotubes are considered pertinent and cumulative.

Claims 63, 132-138 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. taken with applicants' admissions.

Chen, supra, does not teach a polymer, however applicants admit that this is known with swnts. (if applicants traverse this particular holding, then they should submit all articles which include the present inventors published prior to the earliest effective filing date). Using a polymer is an obvious expedient to make an useful composite material, for electrical or structural applications.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with

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this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 63, 132-138 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 7304103. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim common subject matter.

Applicant's arguments filed 1/26/09 have been fully considered but they are not persuasive. The amendment moots most issues, however it is noted that the claims still encompass complete removal of functional groups.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.

/Stuart Hendrickson/
examiner Art Unit 1754